

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

SPECIAL ANNOUNCEMENT

Announcement 96-108, page 15.

Comments are invited on the development of interim criteria for designating private delivery services for purposes of the timely filing and payment rules of section 7502 of the Code. A public hearing will be held on December 6, 1996.

INCOME TAX

T.D. 8683, page 9.

REG-209803-95, page 14.

Final, temporary, and proposed regulations under section 6011 of the Code relate to the requirements for filing information returns on magnetic media or in other machine-readable form. A public hearing on the proposed regulations will be held on February 5, 1997.

T.D. 8684, page 4.

Final regulations under section 1254 of the Code relate to the tax treatment of gain from the disposition of

interest in certain natural resource recapture property by S corporations and their shareholders.

EMPLOYEE PLANS

Notice 96-54, page 13.

Guidelines are set forth for determining for October 1996 the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code as amended by the Omnibus Budget Reconciliation Act of 1987 and by the Uruguay Round Agreements Act (GATT).

Announcement 96-113, page 18.

Plan sponsors may order Form 8837, *Notice of Adoption of Revenue Procedure Model Amendments*, by telephone, by modem or on the Internet.

EXEMPT ORGANIZATIONS

Announcement 96-111, page 16.

A list is given of organizations now classified as private foundations.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the

quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semi-annually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents U.S. Government Printing Office, Washington, D.C. 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 1254.—Gain From Disposition of Interest in Oil, Gas, Geothermal, or Other Mineral Properties

26 CFR 1.1254-4: Special rules for S corporations and their shareholders.

T.D. 8684

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the tax treatment by S corporations and their shareholders of gain from the disposition by an S corporation (and a corporation that was formerly an S corporation) of certain natural resource recapture property (section 1254 property after enactment of the Tax Reform Act of 1986 and oil, gas, or geothermal property before enactment of the Tax Reform Act of 1986), and also rules relating to the disposition of stock in an S corporation that holds certain natural resource recapture property. Changes to the applicable tax law were made by the Tax Reform Act of 1986, and the Subchapter S Revision Act of 1982. The regulations provide the public with guidance in complying with the changed tax laws.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: James A. Quinn, 202-622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1493. This information is required by the IRS to establish that a portion of

the gain recognized upon a sale or exchange of S corporation stock is not attributable to a shareholder's section 1254 costs so as to qualify for the exception contained in § 1.1254-4(c)(2)(i)(A).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 21, 1995, the IRS published in the **Federal Register** a notice of proposed rulemaking (60 FR 66238) providing rules for applying the provisions of section 1254 to the disposition of natural resource recapture property by an S corporation (and a corporation that was formerly an S corporation) and the disposition of S corporation stock. No written comments responding to this notice were received. No public hearing was held because no hearing was requested. The proposed regulations are adopted without any substantive change by this Treasury decision. However, in the course of preparing the final regulations for publication, the IRS and Treasury Department have determined that §§ 1.1254-2 and 1.1254-3 are in need of minor technical clarifications. Accordingly, §§ 1.1254-2 and 1.1254-3 are clarified as discussed below.

Clarification of §§ 1.1254-2 and 1.1254-3

Section 1.1254-2(d)(1) is amended to state that § 1.1254-2(d)(1) is applied without regard to § 1.1254-1(b)(2)(vii). This amendment clarifies that section 1254 costs must be recaptured in a like-kind exchange or involuntary conversion that involves the acquisition of property that is not natural resource recapture property. The amendment makes clear that the treatment of like-kind exchanges and involuntary conversions involving natural resource recapture property is similar to the treatment of these transactions involving section 1245 property. See §§ 1.1245-3(a)(3), 1.1245-4(d)(1), 1.1245-4(d)(2), *Example 2*, and 1.1245-5(a)(2), *Example*.

Section 1.1254-3(b)(1) provides that if natural resource recapture property is transferred in certain transactions the amount of section 1254 costs with respect to the property in the hands of the transferee equals the amount of section 1254 costs with respect to the property in the hands of the transferor minus the amount of any gain taken into account as ordinary income under section 1254(a)(1) by the transferor upon the disposition. The intent of this rule is that in these transactions the section 1254 costs with respect to the property are to be transferred to the transferee but reduced by any gain taken into account as ordinary income. However, in the case of an S corporation or partnership transferor, the section 1254 costs have generally been allocated among the shareholders or partners. Consequently, § 1.1254-3(b)(1) is clarified to provide that in the case of an S corporation transferor the section 1254 costs include the section 1254 costs of the shareholders minus any gain taken into account by the shareholders as ordinary income. A similar clarification is added for partnership transferors.

Similarly, § 1.1254-3(d) is clarified for like-kind exchanges and involuntary conversions to provide that in the case of an S corporation the section 1254 costs include the section 1254 costs of the shareholders minus any gain taken into account by the shareholders as ordinary income. A similar clarification is added for a partnership.

Effective Date

Section 1.1254-4 applies to dispositions of natural resource recapture prop-

erty by an S corporation (and a corporation that was formerly an S corporation) and dispositions of S corporation stock occurring on or after October 10, 1996. The clarifications to §§ 1.1254-2 and 1.1254-3 are effective for dispositions of property occurring on or after October 10, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.1254-4 also issued under 26 U.S.C. 1254(b). * * *

Par. 2. Section 1.1254-0 is amended by revising the entry for § 1.1254-4 to read as follows:

§ 1.1254-0 Table of contents for section 1254 recapture rules.

* * * * *

§ 1.1254-4 Special rules for S corporations and their shareholders.

(a) In general.

(b) Determination of gain treated as ordinary income under section 1254 upon a disposition of natural resource recapture property by an S corporation.

(1) General rule.

(2) Examples.

(c) Character of gain recognized by a shareholder upon a sale or exchange of S corporation stock.

(1) General rule.

(2) Exceptions.

(3) Examples.

(d) Section 1254 costs of a shareholder.

(e) Section 1254 costs of an acquiring shareholder after certain acquisitions.

(1) Basis determined under section 1012.

(2) Basis determined under section 1014(a).

(3) Basis determined under section 1014(b)(9).

(4) Gifts and section 1041 transfers.

(f) Special rules for a corporation that was formerly an S corporation or formerly a C corporation.

(1) Section 1254 costs of an S corporation that was formerly a C corporation.

(2) Examples.

(3) Section 1254 costs of a C corporation that was formerly an S corporation.

(g) Determination of a shareholder's section 1254 costs upon certain stock transactions

(1) Issuance of stock.

(2) Natural resource recapture property acquired in exchange for stock.

(3) Treatment of nonvested stock.

(4) Exception.

(5) Aggregate of S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation

(6) Examples.

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Par. 3. Section 1.1254-2 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 1.1254-2 Exceptions and limitations.

* * * * *

(d) * * * (1) * * *

(ii) The fair market value of property acquired that is not natural resource recapture property (determined without regard to § 1.1254-1(b)(2)(vii)) and is not taken into account under paragraph (d)(1)(i) of this section (that is, qualify-

ing property under section 1031 or 1033 that is not natural resource recapture property).

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Par. 4. Section 1.1254-3 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii), (d)(1)(i) and (d)(1)(ii) to read as follows:

§ 1.1254-3 Section 1254 costs immediately after certain acquisitions.

* * * * *

(b) * * * (1) * * *

(i) The amount of section 1254 costs with respect to the natural resource recapture property in the hands of the transferor immediately before the disposition (and in the case of an S corporation or partnership transferor, the section 1254 costs of the shareholders or partners with respect to the natural resource recapture property); minus

(ii) The amount of any gain taken into account as ordinary income under section 1254(a)(1) by the transferor upon the disposition (and in the case of an S corporation or partnership transferor, any such gain taken into account as ordinary income by the shareholders or partners).

* * * * *

(d) * * * (1) * * *

(i) The amount of section 1254 costs with respect to the natural resource recapture property disposed of (including the section 1254 costs of the shareholders of an S corporation or of the partners of a partnership with respect to the natural resource recapture property); minus

(ii) The amount of any gain taken into account as ordinary income under section 1254(a)(1) by the transferor upon the disposition (and in the case of an S corporation or partnership transferor, any such gain taken into account as ordinary income by the shareholders or partners).

* * * * *

Par. 5. Section 1.1254-4 is amended by adding text to read as follows:

§ 1.1254-4 Special rules for S corporations and their shareholders.

(a) *In general.* This section provides rules for applying the provisions of section 1254 to S corporations and their shareholders upon the disposition by an S corporation (and a corporation that was formerly an S corporation) of natural resource recapture property and upon

the disposition by a shareholder of stock of an S corporation that holds natural resource recapture property.

(b) *Determination of gain treated as ordinary income under section 1254 upon a disposition of natural resource recapture property by an S corporation*—(1) *General rule.* Upon a disposition of natural resource recapture property by an S corporation, the amount of gain treated as ordinary income under section 1254 is determined at the shareholder level. Each shareholder must recognize as ordinary income under section 1254 the lesser of—

(i) The shareholder's section 1254 costs with respect to the property disposed of; or

(ii) The shareholder's share of the amount, if any, by which the amount realized on the sale, exchange, or involuntary conversion, or the fair market value of the property upon any other disposition (including a distribution), exceeds the adjusted basis of the property.

(2) *Examples.* The following examples illustrate the provisions of paragraph (b)(1) of this section:

Example 1. Disposition of natural resource recapture property other than oil and gas property. A and B are equal shareholders in X, an S corporation. On January 1, 1997, X acquires for \$90,000 an undeveloped mineral property, its sole property. During 1997, X expends and deducts \$100,000 in developing the property. On January 15, 1998, X sells the property for \$250,000 when X's basis in the property is \$90,000. Thus, X recognizes gain of \$160,000 on the sale. A and B's share of the \$160,000 gain recognized is \$80,000 each. Each shareholder has \$50,000 of section 1254 costs with respect to the property. Under these circumstances, A and B each are required to recognize \$50,000 of the \$80,000 of gain on the sale of the property as ordinary income under section 1254.

Example 2. Disposition of oil and gas property the adjusted basis of which is allocated to the shareholders under section 613A(c)(11). C and D are equal shareholders in Y, an S corporation. On January 1, 1997, Y acquires for \$150,000 an undeveloped oil and gas property, its sole property. During 1997, Y expends in developing the property \$40,000 in intangible drilling costs which it elects to expense under section 263(c). On January 15, 1998, Y sells the property for \$200,000. C and D's share of the \$200,000 amount realized on the sale is \$100,000 each. C and D each have a basis of \$75,000 in the property and \$20,000 of section 1254 costs with respect to the property. Under these circumstances, C and D each are required to recognize \$20,000 of the \$25,000 gain on the sale of the property as ordinary income under section 1254.

(c) *Character of gain recognized by a shareholder upon a sale or exchange of S corporation stock*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, if an S corporation shareholder recognizes gain upon a sale or exchange of stock in the S corpora-

tion (determined without regard to section 1254), the gain is treated as ordinary income under section 1254 to the extent of the shareholder's section 1254 costs (with respect to the shares sold or exchanged).

(2) *Exceptions*—(i) *Gain not attributable to section 1254 costs*—(A) *General rule.* Paragraph (c)(1) of this section does not apply to any portion of the gain recognized on the sale or exchange of the stock that the taxpayer establishes is not attributable to section 1254 costs. The portion of the gain recognized that is not attributable to section 1254 costs is that portion of the gain recognized that exceeds the amount of ordinary income that the shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) if, immediately prior to the sale or exchange of the stock, the corporation had sold at fair market value all of the corporation's property the disposition of which would result in the recognition by the shareholder of ordinary income under section 1254.

(B) *Substantiation.* To establish that a portion of the gain recognized is not attributable to a shareholder's section 1254 costs so as to qualify for the exception contained in paragraph (c)(2)(i)(A) of this section, the shareholder must attach to the shareholder's tax return a statement detailing the shareholder's share of the fair market value and basis, and the shareholder's section 1254 costs, for each of the S corporation's natural resource recapture properties held immediately before the sale or exchange of stock.

(ii) *Transactions entered into as part of a plan to avoid recognition of ordinary income under section 1254.* In the case of a contribution of property prior to a sale or exchange of stock pursuant to a plan a principal purpose of which is to avoid recognition of ordinary income under section 1254, paragraph (c)(1) of this section does not apply. Instead, the amount recognized as ordinary income under section 1254 is the amount of ordinary income the selling or exchanging shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) had the S corporation sold its natural resource recapture property the disposition of which would have resulted in the recognition of ordinary income under section 1254. The amount recognized as ordinary income under the preceding sentence reduces the amount realized on the sale or exchange of the stock. This

reduced amount realized is used in determining any gain or loss on the sale or exchange.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (c):

Example 1. Application of general rule upon a sale of S corporation stock. C and D are equal shareholders in Y, an S corporation. As of January 1, 1997, Y holds two mining properties: Blackacre, with an adjusted basis of \$5,000 and a fair market value of \$35,000, and Whiteacre, with an adjusted basis of \$20,000 and a fair market value of \$15,000. Y also holds securities with a basis of \$5,000 and a fair market value of \$10,000. On January 1, 1997, D sells 50 percent of D's Y stock to E for \$15,000. As of the date of the sale, D's adjusted basis in the Y stock sold is \$7,500, and D has \$18,000 of section 1254 costs with respect to Blackacre and \$12,000 of section 1254 costs with respect to Whiteacre. Under this paragraph (c), the gain recognized by D upon the sale of Y stock is treated as ordinary income to the extent of D's section 1254 costs with respect to the stock sold, unless D establishes that a portion of such excess is not attributable to D's section 1254 costs. However, because D would recognize \$7,500 in ordinary income under section 1254 with respect to the stock sold if Y sold Blackacre (the only asset the disposition of which would result in ordinary income to D under section 1254), the \$7,500 of gain recognized by D upon the sale of D's Y stock is attributable to D's section 1254 costs. Therefore, upon the sale of stock to E, D recognizes \$7,500 of ordinary income under this paragraph (c).

Example 2. Sale of S corporation stock where gain is not entirely attributable to section 1254 costs. Assume the same facts as in *Example 1*, except that Blackacre has a fair market value of \$25,000, and the securities have a fair market value of \$20,000. Immediately prior to the sale of stock to E, if Y had sold Blackacre (its only asset the disposition of which would result in the recognition of ordinary income to D under section 1254), D would recognize \$5,000 in ordinary income with respect to the stock sold under section 1254. D attaches a statement to D's tax return for 1997 detailing D's share of the fair market values and bases, and D's section 1254 costs with respect to Blackacre and Whiteacre. Therefore, upon the sale of stock to E, of the \$7,500 gain recognized by D, \$5,000 is ordinary income under this paragraph (c).

Example 3. Contribution of property prior to sale of S corporation stock as part of a plan to avoid recognition of ordinary income under section 1254. H owns all of the stock of Z, an S corporation. As of January 1, 1997, H has \$3,000 of section 1254 costs with respect to property P, which is natural resource recapture property and Z's only asset. Property P has an adjusted basis of \$5,000 and a fair market value of \$8,000. H has a basis of \$5,000 in Z stock, which has a fair market value of \$8,000. On January 1, 1997, H contributes securities to Z which have a basis of \$7,000 and a fair market value of \$4,000. On April 15, 1997, H sells all of the Z stock to J for \$12,000. On that date, H's adjusted basis in the Z stock is also \$12,000. Based on all the facts and circumstances, the sale of stock is part of a plan (along with the contribution by H of the securities to Z) that has a principal purpose to avoid recognition of ordinary income under section 1254. Consequently, under paragraph (c)(2)(ii) of this section, H must recognize \$3,000 as ordinary

income under section 1254, the amount of ordinary income that H would recognize as ordinary income under section 1254 if property P were sold at fair market value. In addition, H reduces the amount realized on the sale of the stock (\$12,000) by \$3,000. As a result, H also recognizes a \$3,000 capital loss on the sale of the stock (\$9,000 amount realized less \$12,000 adjusted basis).

(d) *Section 1254 costs of a shareholder.* An S corporation shareholder's section 1254 costs with respect to any natural resource recapture property held by the corporation include all of the shareholder's section 1254 costs with respect to the property in the hands of the S corporation. See § 1.1254-1(b)(1) for the definition of section 1254 costs.

(e) *Section 1254 costs of an acquiring shareholder after certain acquisitions—(1) Basis determined under section 1012.* If stock in an S corporation that holds natural resource recapture property is acquired and the acquiring shareholder's basis for the stock is determined solely by reference to its cost (within the meaning of section 1012), the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands is zero on the acquisition date.

(2) *Basis determined under section 1014(a).* If stock in an S corporation that holds natural resource recapture property is acquired from a decedent and the acquiring shareholder's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the stock on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date), the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands is zero on the acquisition date.

(3) *Basis determined under section 1014(b)(9).* If stock in an S corporation that holds natural resource recapture property is acquired before the death of the decedent, the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands includes the amount, if any, of the section 1254 costs deducted by the acquiring shareholder before the decedent's death, to the extent that the basis of the stock (determined under section 1014(a)) is required to be reduced under section 1014(b)(9) (relating to adjustments to basis when the property is acquired before the death of the decedent).

(4) *Gifts and section 1041 transfers.* If stock is acquired in a transfer that is a gift, in a transfer that is a part sale or exchange and part gift, or in a transfer that is described in section 1041(a), the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands immediately after the transfer is an amount equal to—

(i) The amount of section 1254 costs with respect to the property held by the corporation in the hands of the transferor immediately before the transfer; minus

(ii) The amount of any gain recognized as ordinary income under section 1254 by the transferor upon the transfer.

(f) *Special rules for a corporation that was formerly an S corporation or formerly a C corporation—(1) Section 1254 costs of an S corporation that was formerly a C corporation.* In the case of a C corporation that holds natural resource recapture property and that elects to be an S corporation, each shareholder's section 1254 costs as of the beginning of the corporation's first taxable year as an S corporation include a pro rata share of the section 1254 costs of the corporation as of the close of the last taxable year that the corporation was a C corporation.

(2) *Examples.* The following examples illustrate the application of the provisions of paragraph (f)(1) of this section:

Example 1. Sale of natural resource recapture property held by an S corporation that was formerly a C corporation—(i) Y is a C corporation that elects to be an S corporation effective January 1, 1997. On that date, Y owns Oil Well, which is natural resource recapture property and a capital asset. Y has section 1254 costs of \$20,000 as of the close of the last taxable year that it was a C corporation. On January 1, 1997, Oil Well has a value of \$200,000 and a basis of \$100,000. Thus, under section 1374, Y's net unrealized built-in gain is \$100,000. Also on that date, Y's basis in Oil Well is allocated to A, Y's sole shareholder, under section 613A(c)(11) and the section 1254 costs are allocated to A under paragraph (f)(1) of this section. In addition, A has a basis in A's Y stock of \$100,000.

(ii) On November 1, 1997, Y sells Oil Well for \$250,000. During 1997, Y has taxable income greater than \$100,000, and no other transactions or items treated as recognized built-in gain or loss. Under section 1374, Y has net recognized built-in gain of \$100,000. Assuming a tax rate of 35 percent on capital gain, Y has a tax of \$35,000 under section 1374. The tax of \$35,000 is treated as a capital loss under section 1366(f)(2). A has a realized gain on the sale of \$150,000 (\$250,000 minus \$100,000) of which \$20,000 is recognized as ordinary income under section 1254, and \$130,000 is recognized as capital gain. Consequently, A recognizes ordinary income of \$20,000 and net capital gain of \$95,000 (\$130,000 minus \$35,000) on the sale.

Example 2. Sale of stock followed by sale of natural resource recapture property held by an S corporation that was formerly a C corporation—(i) Assume the same facts as in *Example 1(i)*. On November 1, 1997, A sells all of A's Y stock to P for \$250,000. A has a realized gain on the sale of \$150,000 (\$250,000 minus \$100,000) of which \$20,000 is recognized as ordinary income under section 1254, and \$130,000 is recognized as capital gain.

(ii) On November 2, 1997, Y sells Oil Well for \$250,000. During 1997, Y has taxable income greater than \$100,000, and no other transactions or items treated as recognized built-in gain or loss. Under section 1374, Y has net recognized built-in gain of \$100,000. Assuming a tax rate of 35 percent on capital gain, Y has a tax of \$35,000 under section 1374. The tax of \$35,000 is treated as a capital loss under section 1366(f)(2). P has a realized gain on the sale of \$150,000 (\$250,000 minus \$100,000), which is recognized as capital gain. Consequently, P recognizes net capital gain of \$115,000 (\$150,000 minus \$35,000) on the sale.

(3) *Section 1254 costs of a C corporation that was formerly an S corporation.* In the case of an S corporation that becomes a C corporation, the C corporation's section 1254 costs with respect to any natural resource recapture property held by the corporation as of the beginning of the corporation's first taxable year as a C corporation include the sum of its shareholders' section 1254 costs with respect to the property as of the close of the last taxable year that the corporation was an S corporation. In the case of an S termination year as defined in section 1362(e)(4), the shareholders' section 1254 costs are determined as of the close of the S short year as defined in section 1362(e)(1)(A). See paragraph (g)(5) of this section for rules on determining the aggregate amount of the shareholders' section 1254 costs.

(g) *Determination of a shareholder's section 1254 costs upon certain stock transactions—(1) Issuance of stock.* Upon an issuance of stock (whether such stock is newly-issued or had been held as treasury stock) by an S corporation in a reorganization described in section 368 or otherwise—

(i) Each recipient of shares must be allocated a pro rata share (determined solely with respect to the shares issued in the transaction) of the aggregate of the S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation immediately before the issuance (as determined pursuant to paragraph (g)(5) of this section); and

(ii) Each pre-existing shareholder must reduce his or her section 1254 costs with respect to natural resource recapture property held by the S corporation immediately before the issuance

by an amount equal to the pre-existing shareholder's section 1254 costs immediately before the issuance multiplied by the percentage of stock of the corporation issued in the transaction.

(2) *Natural resource recapture property acquired in exchange for stock.* If natural resource recapture property is transferred to an S corporation in exchange for stock of the S corporation (for example, in a section 351 transaction, or in a reorganization described in section 368), the S corporation must allocate to its shareholders a pro rata share of the S corporation's section 1254 costs with respect to the property immediately after the transaction (as determined under § 1.1254-3(b)(1)).

(3) *Treatment of nonvested stock.* Stock issued in connection with the performance of services that is substantially nonvested (within the meaning of § 1.83-3(b)) is treated as issued for purposes of this section at the first time it is treated as outstanding stock of the S corporation for purposes of section 1361.

(4) *Exception.* Paragraph (g)(1) of this section does not apply to stock issued in exchange for stock of the same S corporation (as for example, in a recapitalization described in section 368(a)(1)(E)).

(5) *Aggregate of S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation—(i) In general.* The aggregate of S corporation shareholders' section 1254 costs is equal to the sum of each shareholder's section 1254 costs. The S corporation must determine each shareholder's section 1254 costs under either paragraph (g)(5)(ii) (written data) or paragraph (g)(5)(iii) (assumptions) of this section. The S corporation may determine the section 1254 costs of some shareholders under paragraph (g)(5)(ii) of this section and of others under paragraph (g)(5)(iii) of this section.

(ii) *Written data.* An S corporation may determine a shareholder's section 1254 costs by using written data provided by a shareholder showing the shareholder's section 1254 costs with respect to natural resource recapture property held by the S corporation unless the S corporation knows or has reason to know that the written data is inaccurate. If an S corporation does not receive written data upon which it may rely, the S corporation must use the assumptions provided in paragraph

(g)(5)(iii) of this section in determining a shareholder's section 1254 costs.

(iii) *Assumptions.* An S corporation that does not use written data pursuant to paragraph (g)(5)(ii) of this section to determine a shareholder's section 1254 costs must use the following assumptions to determine the shareholder's section 1254 costs—

(A) The shareholder deducted his or her share of the amount of deductions under sections 263(c), 616, and 617 in the first year in which the shareholder could claim a deduction for such amounts, unless in the case of expenditures under sections 263(c) or 616 the S corporation elected to capitalize such amounts;

(B) The shareholder was not subject to the following limitations with respect to the shareholder's depletion allowance under section 611, except to the extent a limitation applied at the corporate level: the taxable income limitation of section 613(a); the depletable quantity limitations of section 613A(c); or the limitations of sections 613A(d)(2), (3), and (4) (exclusion of retailers and refiners).

(6) *Examples.* The following examples illustrate the provisions of this paragraph (g):

Example 1. Transfer of natural resource recapture property to an S corporation in a section 351 transaction. As of January 1, 1997, A owns all the stock (20 shares) in X, an S corporation. X holds property that is not natural resource recapture property that has a fair market value of \$2,000 and an adjusted basis of \$2,000. On January 1, 1997, B transfers natural resource recapture property, Property P, to X in exchange for 80 shares of X stock in a transaction that qualifies under section 351. Property P has a fair market value of \$8,000 and an adjusted basis of \$5,000. Pursuant to section 351, B does not recognize gain on the transaction. Immediately prior to the transaction, B's section 1254 costs with respect to Property P equaled \$6,000. Under § 1.1254-2(c)(1), B does not recognize any gain under section 1254 on the section 351 transaction and, under § 1.1254-3(b)(1), X's section 1254 costs with respect to Property P immediately after the contribution equal \$6,000. Under paragraph (g)(2) of this section, each shareholder is allocated a pro rata share of X's section 1254 costs. The pro rata share of X's section 1254 costs that is allocated to A equals \$1,200 (20 percent interest in X multiplied by X's \$6,000 of section 1254 costs). The pro rata share of X's section 1254 costs that is allocated to B equals \$4,800 (80 percent interest in X multiplied by X's \$6,000 of section 1254 costs).

Example 2. Contribution of money in exchange for stock of an S corporation holding natural resource recapture property. As of January 1, 1997, A and B each own 50 percent of the stock (50 shares each) in X, an S corporation. X holds natural resource recapture property, Property P, which has a fair market value of \$20,000 and an adjusted basis of \$14,000. A's and B's section 1254 costs with respect to Property P are \$4,000 and \$1,500, respectively. On January 1, 1997, C

contributes \$20,000 to X in exchange for 100 shares of X's stock. Under paragraph (g)(1)(i) of this section, X must allocate to C a pro rata share of its shareholders' section 1254 costs. Using the assumptions set forth in paragraph (g)(5)(iii) of this section, X determines that A's section 1254 costs with respect to natural resource recapture property held by X equal \$4,500. Using written data provided by B, X determines that B's section 1254 costs with respect to Property P equal \$1,500. Thus, the aggregate of X's shareholders' section 1254 costs equals \$6,000. C's pro rata share of the \$6,000 of section 1254 costs equals \$3,000 (C's 50 percent interest in X multiplied by \$6,000). Under paragraph (g)(1)(ii) of this section, A's section 1254 costs are reduced by \$2,000 (A's actual section 1254 costs (\$4,000) multiplied by 50 percent). B's section 1254 costs are reduced by \$750 (B's actual section 1254 costs (\$1,500) multiplied by 50 percent).

Example 3. Merger involving an S corporation that holds natural resource recapture property. X, an S corporation with one shareholder, A, holds as its sole asset natural resource recapture property that has a fair market value of \$120,000 and an adjusted basis of \$40,000. A has section 1254 costs with respect to the property of \$60,000. For valid business reasons, X merges into Y, an S corporation with one shareholder, B, in a reorganization described in section 368(a)(1)(A). Y holds property that is not natural resource recapture property that has a fair market value of \$120,000 and basis of \$120,000. Under paragraph (c) of this section, A does not recognize ordinary income under section 1254 upon the exchange of stock in the merger because A did not otherwise recognize gain on the merger. Under paragraph (g)(2) of this section, Y must allocate to A and B a pro rata share of its \$60,000 of section 1254 costs. Thus, A and B are each allocated \$30,000 of section 1254 costs (50 percent interest in X, each, multiplied by \$60,000).

Par. 6. Section 1.1254-6 is amended by adding two sentences at the end of this section to read as follows:

§ 1.1254-6 Effective date of regulations.

* * * Section 1.1254-4 applies to dispositions of natural resource recapture property by an S corporation (and a corporation that was formerly an S corporation) and dispositions of S corporation stock occurring on or after October 10, 1996. Sections 1.1254-2(d)(1)(ii) and 1.1254-3(b)(1)(i) and (ii) and (d)(1)(i) and (ii) are effective for dispositions of property occurring on or after October 10, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows.

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

| CFR part of section where identified and described | Current OMB control No. |
|--|----------------------------|
| * * * * * | |
| 1.1254-4 | 1545-1493 |
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Michael P. Dolan,
*Acting Commissioner of
Internal Revenue.*

Approved September 10, 1996.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on October 9, 1996, 8:45 a.m., and published in the issue of the Federal Register for October 10, 1996, 61 F.R. 53062)

**Section 6011.—General
Requirement of Return, Statement,
or List**

26 CFR 301.6011-2T: Required use of magnetic media (temporary).

T.D. 8683

**DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 301**

**Magnetic Media Filing
Requirements for Information
Returns**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) of the Internal Revenue Code (Code). These regulations affect persons filing information returns. These regulations prescribe new magnetic media filing requirements for employers filing wage and tax statements for employees in Puerto Rico, U.S. Virgin Islands, Guam, and American Samoa. In addition, these regulations provide taxpayers with the guidance to comply with the changes made to the Code and to the administrative practices with respect to filing on magnetic media or in other machine-

readable form. The text of these temporary regulations also serves as the text of the proposed regulations set forth in REG-209803-95, page 14.

EFFECTIVE DATE: These regulations are effective on January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Donna Welch, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224; telephone (202) 622-4910 (not a toll-free call), if the inquiry relates to provisions of these regulations. For further information, see telephone numbers listed at the beginning of SUPPLEMENTARY INFORMATION.

SUPPLEMENTARY INFORMATION: For persons residing in the following locations, contact the following offices of the Social Security Administration (not a toll-free call), if the inquiry relates to magnetic media filing and magnetic media specifications for Form W-2, Form 499R-2/W-2PR, Form W-2VI, Form W-2GU, and Form W-2AS:

Alabama (404) 331-2587 (Atlanta),
Alaska (206) 615-2125 (Seattle),
American Samoa (415) 744-4559 (San Francisco),
Arizona (415) 744-4559 (San Francisco),
Arkansas (501) 324-5466 (Little Rock),
California (415) 744-4559 (San Francisco),
Colorado (303) 844-2364 (Denver),
Connecticut (617) 565-2895 (Boston),
Delaware (215) 597-4632 (Philadelphia),
District of Columbia (215) 597-4632 (Philadelphia),
Florida (404) 331-2587 (Atlanta),
Georgia (404) 331-2587 (Atlanta),
Guam (415) 744-4559 (San Francisco),
Hawaii (415) 744-4559 (San Francisco),
Idaho (206) 615-2125 (Seattle),
Illinois (312) 353-6717 (Chicago),
Indiana (312) 353-6717 (Chicago),
Iowa (816) 426-2095 (Kansas City),
Kansas (816) 426-2095 (Kansas City),
Kentucky (404) 331-2587 (Atlanta),
Louisiana (504) 389-0426 (Baton Rouge),
Maine (617) 565-2895 (Boston),
Maryland (215) 597-4632 (Philadelphia),

Massachusetts (617) 565-2895 (Boston),
Michigan (312) 353-6717 (Chicago),
Minnesota (312) 353-6717 (Chicago),
Mississippi (404) 331-2587 (Atlanta),
Missouri (816) 426-2095 (Kansas City),
Montana (303) 844-2364 (Denver),
Nebraska (816) 426-2095 (Kansas City),
Nevada (415) 744-4559 (San Francisco),
New Hampshire (617) 565-2895 (Boston),
New Jersey (212) 264-0258 (New York),
New Mexico (505) 262-6048 (Albuquerque),
New York (212) 264-0258 (New York),
North Carolina (404) 331-2587 (Atlanta),
North Dakota (303) 844-2364 (Denver),
Ohio (312) 353-6717 (Chicago),
Oklahoma (405) 951-3007 (Oklahoma City),
Oregon (206) 615-2125 (Seattle),
Pennsylvania (215) 597-4632 (Philadelphia),
Puerto Rico (809) 766-5574 (San Juan),
Rhode Island (617) 565-2895 (Boston),
South Carolina (404) 331-2587 (Atlanta),
South Dakota (303) 844-2364 (Denver),
Tennessee (404) 331-2587 (Atlanta),
Texas-Central/South (210) 229-6433 (San Antonio),
Texas-Dallas County (214) 767-6777 (Dallas),
Texas-North (817) 334-3123 (Forth Worth),
Texas-Southeast (713) 653-4722 (Houston),
Texas-West (505) 262-6048 (Albuquerque),
Utah (303) 844-2364 (Denver),
Vermont (617) 565-2895 (Boston),
Virgin Islands (809) 766-5574 (San Juan),
Virginia (215) 597-4632 (Philadelphia),
Washington (206) 615-2125 (Seattle),
West Virginia (215) 597-4632 (Philadelphia),
Wisconsin (312) 353-6717 (Chicago),
and
Wyoming (303) 844-2364 (Denver).
Magnetic Media Reporting, Internal Revenue Service, Martinsburg Computing Center, P.O. Box 1359, Martinsburg,

West Virginia 25401-1359; telephone (304) 263-8700 (not a toll-free call), if the inquiry relates to either the waiver procedure for all forms described in these regulations or to the magnetic media specifications for Forms 1042-S, 1098, 1099 series, 5498, 8027, or W-2G.

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR Part 301) relating to the requirement under section 6011(e) to file information returns on magnetic media or in other machine-readable form. Section 6011(e) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e) of the Internal Revenue Code (Code) was added to the Code by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248, 96 Stat. 610; and was amended by section 109 of the Interest and Dividend Tax Compliance Act of 1983, Public Law 98-67, 97 Stat. 383; and section 7713 of the Revenue Reconciliation Act of 1989 (1989 Act), Public Law 101-239, 103 Stat. 2394.

This document also contains conforming amendments to the Income Tax Regulations (26 CFR Part 1) relating to returns of information of brokers and barter exchanges required under section 6045.

Explanation of Provisions

In order to reduce its administrative burden and increase accurate processing of information, the Social Security Administration (the SSA) requested that regulations be issued to require Forms 499R-2/W-2PR (Withholding Statement), Forms W-2VI (U.S. Virgin Islands Wage and Tax Statement), Forms W-2GU (Guam Wage and Tax Statement), and Forms W-2AS (American Samoa Wage and Tax Statement) to be filed on magnetic media. In Notice 95-64 (1995-2 C.B. 342), the IRS informed taxpayers of its intention to issue regulations requiring these forms to be filed on magnetic media with the SSA and invited public comment on the matter. The Notice stated that the requirement would be effective for wage and tax statements required to be filed after December 31, 1996. No comments were received in response to the Notice. These regulations expand the wage and

tax statements required to be filed on magnetic media with the SSA to include Form 499R-2/W-2PR, Form W-2VI, Form W-2GU, and Form W-2AS.

In addition, these regulations reflect the current provisions of section 6011(e). As amended by the 1989 Act, section 6011(e)(2)(A) provides that the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year (250-threshold). Consistent with the provisions of section 6011(e)(2)(A), these regulations provide that no person is required to file on magnetic media unless the person is required to file 250 or more returns during the calendar year. Further, these regulations clarify that each type of information return is considered a separate return, and the 250-threshold applies separately to each type of form required to be filed.

In addition, these regulations reflect the current administrative practices with respect to filing information returns on magnetic media or in other machine-readable form. The IRS and the SSA now permit filing on tape cartridge but no longer permit filing on cassette. Further, the IRS currently permits electronic filing as an alternative method of filing, and the SSA is considering permitting electronic filing in the future. Thus, under these regulations, magnetic media generally include magnetic tape, tape cartridge, diskette, and other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

Further, these regulations reflect the current procedures for obtaining consent and authorization from the IRS before filing on magnetic media. These regulations refer to Form 4419 (Application for Filing Information Returns Magnetically/Electronically), which must be filed by a transmitter with the IRS before filing Forms 1042-S, 1098, 1099 series, 5498, 8027, and W-2G on magnetic media or electronically. These regulations also remove any reference to obtaining consent from the SSA because it no longer requires consent or authorization before filing on magnetic media.

Under the existing regulations, a taxpayer may request a hardship waiver from the magnetic media filing requirements. The principal factor for demonstrating hardship is the amount, if any, by which the cost of filing on magnetic media exceeds the cost of filing on paper. The existing regulations provide that, if an employer is required to make

a final return on Form 941, or a variation thereof, and expedited filing of Form W-2 is required, the unavailability of the specifications for magnetic media filing will be treated as creating a hardship, and a waiver of the magnetic media filing requirements for the expedited Forms W-2 may be granted. This document extends this waiver provision to expedited filing of Forms 499R-2/W-2PR, Forms W-2VI, Forms W-2GU, and Forms W-2AS.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that these regulations impose no additional reporting or recordkeeping requirement and only prescribe the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the requirements imposed by statute. Section 6011(e)(2)(A) provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Consistent with the statutory provision, these regulations do not require information returns to be filed on magnetic media unless 250 or more returns are required to be filed. Further, the economic impact caused by filing on magnetic media should be minimal. If a taxpayer's operations are computerized, reporting in accordance with the regulations should be less costly than filing on paper. If the taxpayer's operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the existing regulations provide that the IRS may waive the magnetic media filing requirements upon a showing of hardship. It is anticipated that the waiver authority will be exercised so as not to unduly burden taxpayers lacking both the necessary data processing facilities and access at a reasonable cost to

computer service bureaus. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Donna Welch, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6045-1 is amended by adding a sentence at the end of paragraph (q) to read as follows:

§ 1.6045-1 Returns of information of brokers and barter exchanges.

* * * * *

(q) * * * With regard to paragraph (l) of this section, see section 6011(e) of the Internal Revenue Code for information returns required to be filed after December 31, 1989, and before January 1, 1997; and see § 1.6045-1T(l) for information returns required to be filed after December 31, 1996.

Par. 3. Section 1.6045-1T is added to read as follows:

§ 1.6045-1T Returns of information of brokers and barter exchanges (temporary).

(a) through (k) [Reserved] For further guidance, see § 1.6045-1(a) through (k).

(l) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011-2T of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue

hardship. For information returns filed prior to January 1, 1997, see § 1.6045-1(l).

Par. 4. Section 1.6045-2 is amended by adding a sentence at the end of paragraph (i) to read as follows:

§ 1.6045-2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(i) * * * With regard to paragraph (g)(2) of this section, see section 6011(e) of the Internal Revenue Code for information returns required to be filed after December 31, 1989, and before January 1, 1997; and see § 1.6045-2T(g)(2) for information returns required to be filed after December 31, 1996.

Par. 5. Section 1.6045-2T is added to read as follows:

§ 1.6045-2T Furnishing statement required with respect to certain substitute payments (temporary).

(a) through (g)(1) [Reserved] For further guidance, see § 1.6045-2(a) through (g)(1).

(g)(2) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011-2T of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. For information returns filed prior to January 1, 1997, see § 1.6045-2(g)(2).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 5. Section 301.6011-2T is added to read as follows:

§ 301.6011-2T Required use of magnetic media (temporary).

This section applies to information returns required to be filed after December 31, 1996. For information returns required to be filed after December 31, 1989, and before January 1, 1997, see section 6011(e) of the Internal Revenue Code and § 301.6011-2.

(a) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable regulations,

revenue procedures, or, in the case of returns filed with the Social Security Administration, Social Security Administration publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

(2) and (3) [Reserved] For further guidance, see § 301.6011-2(a)(2) and (3).

(b) *Returns required on magnetic media.* (1) If the use of Form 1042-S, 1098, 1099 series, 5498, 8027, W-2G, or other form treated as a form specified in this paragraph (b)(1) is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns on magnetic media must be made in accordance with applicable revenue procedures or publications. See § 601.601(d)(2)(ii)(b) of this chapter. Pursuant to these procedures, the consent of the Commissioner of Internal Revenue (or other authorized officer or employee of the Internal Revenue Service) to a magnetic medium must be obtained by submitting Form 4419 (Application for Filing Information Returns Magnetically/Electronically) prior to submitting a return described in this paragraph (b)(1) on the magnetic medium.

(2) If the use of Form W-2 (Wage and Tax Statement), Form 499R-2/W-2PR (Withholding Statement), Form W-2VI (U.S. Virgin Islands Wage and Tax Statement), Form W-2GU (Guam Wage and Tax Statement), Form W-2AS (American Samoa Wage and Tax Statement), or other form treated as a form specified in this paragraph (b)(2) is required for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns described in this paragraph (b)(2) must be made in accordance with applicable Social Security Administration procedures or publications (which may be obtained from the local office of the Social Security Administration).

(3) [Reserved] For further guidance, see § 301.6011-2(b)(3).

(c) *Exceptions—(1) Low-volume filers/250-threshold—(i) In general.* No person is required to file information returns on magnetic media unless the

person is required to file 250 or more returns during the calendar year. Persons filing fewer than 250 returns during the calendar year may make the returns on the prescribed paper form, or, alternatively, such persons may make returns on magnetic media in accordance with paragraph (b) of this section.

(ii) [Reserved] For further guidance, see § 301.6011-2(c)(1)(ii).

(iii) *No aggregation.* Each type of information return described in paragraphs (b)(1) and (2) of this section is considered a separate return for purposes of this paragraph (c)(1). Therefore, the 250-threshold applies separately to each type of form required to be filed.

(iv) *Examples.* The provisions of paragraph (c)(1)(iii) of this section are illustrated by the following examples:

Example 1. For the calendar year ending December 31, 1996, Company X is required to file 200 returns on Form 1099-INT and 350 returns on Form 1099-MISC. Company X is not required to file Forms 1099-INT on magnetic media but is required to file Forms 1099-MISC on magnetic media.

Example 2. During the calendar year ending December 31, 1996, Company Y has 275 employees in Puerto Rico and 50 employees in American Samoa. Company Y is required to file Forms 499R-2/W-2PR on magnetic media but is not required to file Forms W-2AS on magnetic media.

Example 3. For the calendar year ending December 31, 1996, Company Z files 300 original returns on Form 1099-DIV and later files 70 corrected returns on Form 1099-DIV. Company Z is required to file the original returns on magnetic media. However, Company Z is not required to file the corrected returns on magnetic media because the corrected returns fall under the 250-threshold. See § 301.6721-1(a)(2)(ii).

(2) *Waiver.* (i) The Commissioner may waive the requirements of this section if hardship is shown in a request

for waiver filed in accordance with this paragraph (c)(2)(i). The principal factor in determining hardship will be the amount, if any, by which the cost of filing the information returns in accordance with this section exceeds the cost of filing the returns on other media. Notwithstanding the foregoing, if an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Forms W-2, Forms 499R-2/W-2PR, Forms W-2VI, Forms W-2GU, or Form W-2AS is required, the unavailability of the specifications for magnetic media filing will be treated as creating a hardship. See § 31.6071(a)-1(a)(3)(ii). A request for waiver must be made in accordance with applicable revenue procedures or publications. See § 601.601-(d)(2)(ii)(b) of this chapter. Pursuant to these procedures, a request for waiver should be filed at least 45 days before the due date of the information return in order for the Service to have adequate time to respond to the request for waiver. The waiver will specify the type of information return and the period to which it applies and will be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner.

(ii) The Commissioner may prescribe rules that supplement the provisions of paragraph (c)(2)(i) of this section.

(c)(3) and (4) [Reserved]. For further guidance, see § 301.6011-2(c)(3) and (4).

(d) and (e) [Reserved] For further guidance, see § 301.6011-2(d) and (e).

(f) *Failure to file.* If a person fails to

file an information return on magnetic media when required to do so by this section, the person is deemed to have failed to file the return. In addition, if a person making returns on a paper form under paragraph (c) of this section fails to file a return on machine-readable paper form when required to do so by this section, the person is deemed to have failed to file the return. See sections 6652, 6693, and 6721 for penalties for failure to file certain returns. See also section 6724 and the regulations under section 6721 for the specific rules and limitations regarding the penalty imposed under section 6721 for failure to file on magnetic media.

(g) *Effective date.* (1) [Reserved] For further guidance, see § 301.6011-2(g)(1).

(2) Paragraphs (a)(1), (b)(1) and (2), (c)(1)(i), (iii), and (iv), (c)(2), and (f) of this section are effective for information returns required to be filed after December 31, 1996. For information returns required to be filed after December 31, 1989, and before January 1, 1997, see section 6011(e) of the Internal Revenue Code and § 301.6011-2.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved September 10, 1996.

Donald C. Lubick,
*Acting Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on October 9, 1996, 8:45 a.m., and published in the issue of the Federal Register for October 10, 1996, 61 F.R. 53058)

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 96-54

Notice 88-73 provides guidelines for determining the weighted average interest rate and the resulting permissible

range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act,

P.L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for September 1996 is 7.03 percent.

The following rates were determined for the plan years beginning in the month shown below.

| Month | Year | Weighted Average | 90% to 108% Permissible Range | 90% to 110% Permissible Range |
|---------|------|------------------|-------------------------------|-------------------------------|
| October | 1996 | 6.91 | 6.22 to 7.47 | 6.22 to 7.61 |

Drafting Information

The principal author of this notice is Donna Prestia of the Employee Plans

Division. For further information regarding this notice, call (202) 622-6076 between 2:30 and 4:00 p.m. Eastern time (not a toll-free number). Ms.

Prestia's number is (202) 622-7377 (also not a toll-free number).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Magnetic Media Filing Requirements for Information Returns

REG-209803-95

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: In ***T.D. 8683, page 9, the IRS is issuing temporary regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) of the Internal Revenue Code. The text of those temporary regulations also serves as the text of the proposed regulations. This document also contains a proposed amendment to § 301.6011-2(g)(2). This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by January 8, 1997. Outlines of topics to be discussed at the public hearing scheduled for February 5, 1997, must be received by January 15, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-209803-95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-209803-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in Room 3313 of the Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Donna Welch, (202) 622-4910; concerning submissions and the hearing, Mike Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in T.D. 8683 amend the Income Tax Regulations (26 CFR part 1) relating to section 6045 and the Procedure and Administration Regulations (26 CFR part 301) relating to section 6011(e). The temporary regulations contain rules relating to the filing requirements of information returns on magnetic media or in other machine-readable form under section 6011(e).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that these regulations impose no additional reporting or recordkeeping requirement and only prescribe the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the requirements imposed by statute. Section 6011(e)(2)(A) provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Consistent with the statutory provision, these regulations do not require information returns to be filed on magnetic media unless 250 or more returns are required to be filed. Further, the economic impact caused by requiring filing on magnetic media should be minimal. If a taxpayer's operations are computerized, reporting in accordance with the regulations should be less costly than filing on paper. If the taxpayer's operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of

computer service bureaus. In addition, the existing regulations provide that the IRS may waive the magnetic media filing requirements upon a showing of hardship. It is anticipated that the waiver authority will be exercised so as not to unduly burden taxpayers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 5, 1997, at 10 a.m. The hearing will be held in room 3313 of the Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by January 8, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 15, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations is Donna Welch, Office of Assis-

tant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.6045-1, paragraph (l) is revised to read as follows:

§ 1.6045-1 Returns of information of brokers and barter exchanges.

[The text of paragraph (l) as proposed is the same as the first sentence of § 1.6045-1T(l) published in T.D. 8683, page 9.

Par. 3. In § 1.6045-2, paragraph (g)(2) is revised to read as follows:

§ 1.6045-2 Furnishing statement required with respect to certain substitute payments.

[The text of paragraph (g)(2) as proposed is the same as the text of the first sentence of § 1.6045-2T(g)(2) published in T.D. 8683, page 9.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. Section 301.6011-2 is amended by revising paragraphs (a)(1), (b)(1) and (2), (c)(1)(i) and (iii), (c)(2), (f) and (g)(2), and by adding (c)(1)(iv), and by removing paragraphs (c)(3) and (4) and the last sentence of paragraph (e). The revisions and additions read as follows:

§ 301.6011-2 Required use of magnetic media.

[The text of paragraphs (a)(1), (b)(1) and (2), (c)(1)(i), (iii), and (iv), (c)(2), (f), and (g)(2) as proposed is the same as the text in § 301.6011-2T(a)(1), (b)(1) and (2), (c)(1)(i), (iii), and (iv),

(c)(2), (f), and the first sentence of (g)(2) published in T.D. 8683, page 9.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on October 9, 1996, 8:45 a.m., and published in the issue of the Federal Register for October 10, 1996, 61 F.R. 53161)

Developing Interim Requirements for Designated Delivery Services Under Section 7502(f) of the Internal Revenue Code

Announcement 96-108

SUMMARY: This announcement invites comments, and provides notice of a public hearing, with respect to interim criteria for designating private delivery services for purposes of the “timely mailing as timely filing/paying” rule of § 7502 of the Internal Revenue Code.

BACKGROUND: The Internal Revenue Service currently accepts mail from both the United States Postal Service (“USPS”) and private delivery services. However, the “timely mailing as timely filing/paying” rule of § 7502(a) has applied only to documents and payments delivered by the USPS. Thus, taxpayers who assumed that using a private delivery service was adequate to show timely filing of their documents or timely making of their payments could inadvertently fail to qualify under the “timely mailing as timely filing/paying” rule. Similarly, the rule of section 7502(c) that proof of proper registration of a document, or that a postmarked certified mail sender’s receipt was properly issued for a document, is prima facie evidence of delivery applies only to documents sent by United States registered or certified mail.

Section 1210 of the Taxpayer Bill of Rights 2 authorized the Service to expand the “timely mailing as timely filing/paying” rule to documents and payments delivered by certain private delivery services that meet the USPS’s ability to deliver items timely, reliably, and securely. A private delivery service must be designated by the Service before it will qualify for the “timely mailing as timely filing/paying” rule. The new statute also authorized an additional designation under § 7502(f)(3) for those private delivery services that provide a service equivalent to United States registered or certified mail. The

new statute is not intended to limit the mailing options that taxpayers currently use, but rather to expand the “timely mailing as timely filing/paying” rule to more delivery services.

After consideration of public comments received in response to this announcement, the Service intends to issue interim guidance that will establish the criteria to be used to designate private delivery services for a limited period of time, starting in the first quarter of 1997. Once that interim guidance is issued, private delivery services will be able to apply to the Service to become “designated delivery services” under § 7502(f). After consideration of those applications, the Service will publish a list of the designated delivery services for the interim period. That list will indicate whether the designation is solely for purposes of § 7502(f)(2) (timely mailing as timely filing/paying) or whether it is also for purposes of § 7502(f)(3) (services that are equivalent to United States registered or certified mail).

Following its designation of private delivery services for the interim period, the Service intends to publish permanent guidance.

INTERIM REQUIREMENTS: Section 7502(f)(2) provides that the Service may designate a private delivery service only if it meets the following requirements:

(A) it must be available to the general public,

(B) it must be at least as timely and reliable on a regular basis as United States mail,

(C) it must record electronically to its data base (kept in the regular course of its business) the date on which the item was given to the private delivery service for delivery, or mark such date on the cover of the item to be delivered, and

(D) it must meet such other criteria as the Service may prescribe.

Congress intended to allow the designation of private delivery services which meet the USPS’s ability to deliver documents quickly and securely. *See* H.R. Rep. No. 506, 104th Cong., 2d Sess. 51 (1996).

The Service is developing guidance that will implement the statutory criteria during the interim period in accordance with Congress’s intent. For example, the USPS postmarks First-Class Mail on the date an item is received for delivery by indelibly marking such date on the

cover of the item so that it is readable by the human eye without mechanical assistance. The Service anticipates that a similar marking or labeling requirement may be appropriate under clause (C) above, even for a private delivery service that records the date of receipt electronically to its data base. Further, there are special rules under § 7502 for United States mail that has a postmark made other than by the USPS. *See* Treas. Reg. § 301.7502-1(c)(1)(iii)(b). For example, if privately metered mail is incorrectly dated, an envelope may have a postmark made by the USPS in addition to the postmark from a private postage meter. In that situation, the postmark made by the private postage meter is disregarded and the USPS postmark is used for purposes of § 7502. Similarly, if a private delivery service permits the sender (or the sender's agent or intermediary) to identify the date under (C), the private delivery service may be required to have established procedures to verify the date and to correct the date if the item is incorrectly dated.

The Service invites written comments concerning the additional criteria that should be prescribed, under clause (D) above, in order to guarantee the same levels of timeliness, reliability, security, and scope of delivery as are available from the USPS. Comments are also requested on what, if any, different or additional criteria should be applied to determine the equivalence of a private delivery service to United States registered or certified mail within the scope of § 7502(f)(3).

Taxpayers should note that no private delivery service has yet been designated pursuant to § 7502(f), nor will the Service accept applications for designation until the interim guidance is issued. Until such designation is announced, the "timely mailing as timely filing/paying" rule of § 7502 is available only with respect to items sent by United States mail.

COMMENTS AND PUBLIC HEARING: In order to meet the Service's objective of publishing a list of the designated delivery services for the interim period in the first quarter of 1997, it is necessary to receive comments and hold the public hearing (discussed below) as soon as possible. Accordingly, a signed original and eight copies of all comments should be submitted by November 22, 1996, by either mailing them to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Attn: CC:DOM:CORP:T:R:IT&A
(Branch 4) Room 5228
Washington, D.C. 20044,

or hand delivering them between the hours of 8:00 a.m. and 5:00 p.m. to:

Courier's Desk
Internal Revenue Service
1111 Constitution Avenue, N.W.
Attn: CC:DOM:CORP:T:R:IT&A
(Branch 4) Room 5228
Washington, D.C.

Alternatively, comments may be submitted electronically via the Service's Internet site at "http://www.irs.ustreas.gov/prod/tax_regs/comments.html". All comments will be available for public inspection and copying.

A public hearing has been scheduled for Friday, December 6, 1996, at 10:00 a.m. in Room 3313; Internal Revenue Building; 1111 Constitution Avenue, N.W.; Washington, D.C. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts. Persons who wish to present oral comments at the hearing must submit written comments as well as an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight copies) by November 22, 1996. Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation, exclusive of the time consumed by the questions from the panel and the answers thereto. An agenda showing the scheduling of the speakers will be made after the outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

FOR FURTHER INFORMATION: For further information regarding the substance of this announcement, contact Robert J. Basso of the Office of Assistant Chief Counsel (Income Tax and Accounting) at (202) 622-6232 (not a toll-free call). For further information regarding the submission of comments and the public hearing, contact Evangelista Lee of the Regulations Unit, Office of Assistant Chief Counsel (Corporate) at (202) 622-7190 (not a toll-free call).

Foundations Status of Certain Organizations

Announcement 96-111

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Assembly of Aethiopian Hebrews, Inc.,
Atlanta, GA
Canids Wildlife Management
Association, Greenbrier, AR
Community Health Foundation of
Central Florida Inc., Aopoka, FL
Festival of Trees Sheboygan County,
Sheboygan, WI
Firethorn Institution, Chicago, IL
Fitzhugh Interventions Inc., Chicago, IL
Fort Ripley-St. Mathias First Response
Inc., Fort Ripley, MN
Fox Valley AIDS Project Inc., Appleton,
WI
Freeport Area Housing Ministry,
Freeport, IL
French Canadian-Acadian Genealogists
of Wisc Inc., New Berlin, WI
Friends for St. Coletta Illinois, Park
Ridge, IL
Friends for the Popular Movement of
Ukraine, Chicago, IL
Friends of Central, Lake Geneva, WI
Friends of Dade County Elderly Inc.,
Miami, FL
Friends of the Chicago Cultural Center,
Chicago, IL
Fulton County Crime Stoppers Inc.,
Canton, IL
Fund for Jewish Education Inc., Skokie,
IL
Genesius Theater Foundation, Rock
Island, IL
Grand Gardens Inc., Grand Rapids, MN
Greater Brown County Committee, Inc.,
Green Bay, WI

Greater Minneapolis Interfaith Network,
 Minneapolis, MN
 Greater Minnesota Christian Counseling
 Services, Minneapolis, MN
 Gold Coast Communities Foundation,
 Metairie, LA
 Hamlin Park Development Corporation,
 Buffalo, NY
 Harvey Video & Productions, Harvey,
 IL
 Hemlock of Wisconsin, Inc., Madison,
 WI
 Hmong International Organization Inc.,
 St. Paul, MN
 Hmong U.S.A. Foundation Inc., St.
 Paul, MN
 Home-Free-Inc., Stevens Point, WI
 Hopkins Wrestling Booster Club,
 Minnetonka, MN
 Human Rights Foundation of Illinois
 Inc., Chicago, IL
 Marine Life Preservation Society, Coral
 Gables, FL
 Mexican Folkloric Dance Company of
 Chicago Inc., Chicago, IL
 Michal Foundation, Chicago, IL
 Military Veterans Museum Inc., Neenah,
 WI
 Minority Family Progress Center Inc
 Center Without Walls, Fayetteville,
 NC
 Mission of Hope, Lockport, IL
 New Haven Festivals, Inc., Hamden, CT
 Old Abe Booster Club, Eau Claire, WI
 Opening Doors of Denver, Aurora, CO
 Park Pals, Inc., Clermont, FL
 Patrick Randall Sawyer Memorial Fund
 Inc., Hartsville, SC
 Paxton Area Health Care Foundation,
 Paxton, IL
 Pickett Steam & Gas Engine Club Inc.,
 Oshkosh, WI
 Polish Childrens Welfare Fund Inc.,
 Chicago, IL
 Prayas Inc., Chicago, IL
 Prince Georges County Foster Parents
 Association Inc., Oxon Hill, MD
 Prism Projects Inc., Washington, DC
 Proclamation Ministries Inc., Salem, VA
 Redirect Inc., Alexandria, VA
 Regional Center for Child Protection,
 Scranton, PA
 Regis Gable Trust Fund, Johnstown, PA
 Residents for a Safe Georgetown,
 Washington, DC
 Results Educational Fund of Maryland
 Inc., Baltimore, MD
 Richardson Dilworth Memorial Fund,
 Philadelphia, PA
 Ringgold Historical Foundation,
 Danville, VA
 Roanoke Valley Museum of Theatre
 History Inc., Roanoke, VA
 Roanoke Valley Therapeutic Riding
 Program Inc., Roanoke, VA
 Roaring Spring Ambulance Service,
 Roaring Spring, PA
 Robert Burns Club of Milwaukee WI,
 New Berlin, WI
 Rockbridge Regional Fairs Inc.,
 Lexington, VA
 Rowland Theatre Inc., Philipsburg, PA
 Salacoa Valley Day Care Inc.,
 Fairmount, GA
 Say Nope to Dope, Ventnor, NJ
 Second Helpings, Hilton Head Island,
 SC
 Sherwood Park Civic Association,
 Philadelphia, PA
 Silica Research Foundation Inc., Silver
 Spring, MD
 Silver Spoons Inc., King of Prussia, PA
 Simple Sacrifice for the Homeless Inc.,
 Severn, MD
 Skaters Education and Training Fund
 Inc., Baltimore, MD
 Ski for Light Montana Inc., Bozeman,
 MT
 Small Important People Inc., Richmond,
 VA
 Society of Primitive Technology Inc.,
 Dover, DE
 Software National Resource Inc., Silver
 Spring, MD
 Somerset Project, Philadelphia, PA
 Southeast Como Improvement
 Association Inc., Minneapolis, MN
 South Side Childrens Advisory Council,
 Pittsburgh, PA
 South Suburban Development, South
 Holland, IL
 Springfield Parks Foundation Inc.,
 Springfield, IL
 Square Wheelers of Pittsburgh Inc.,
 Pittsburgh, PA
 St. Theresa School Development Fund
 Inc., Rolling Meadows, IL
 Student Outreach of Richmond Inc.,
 Richmond, VA
 Sube Inc., Washington, DC
 Sudan Relief and Rehabilitation
 Association Incorporated, Washington,
 DC
 Sunset Christian Academy Inc., Newark,
 NJ
 Support American Troops Fund,
 McHenry, IL
 Survivors and Victims Empowered,
 Lancaster, PA
 Talent Outreach for Underprivileged
 Career Hunters Inc., Cleveland, OH
 Team Center, Chicago, IL
 Token Study Group, Round Lake, IL
 Tomah Youth Hockey Club Inc., Tomah,
 WI
 Trevor E. Ewing Memorial Foundation,
 Inc., Old Greenwich, CT
 Washington Irish RFC Inc., Arlington,
 VA
 Washington Square Village Creative
 Steps Play Group, New York, NY
 Washington Village Academy, Antioch,
 IL
 Waterworks Foundation Inc., Annapolis,
 MD
 Welcome Home, Inc., Brockton, MA
 West Bluff Resident Management
 Corporation, Kansas City, MO
 West Chester Baseball Association Inc.,
 West Chester, PA
 Western Pennsylvania Head Start
 Organization Inc., New Castle, PA
 West Newton Rutland East Springfield
 St. Neighborhood Fund, Inc., Boston,
 MA
 West Philadelphia Housing Development
 Corporation, Philadelphia, PA
 Williamsburg Growing Projects, Inc.,
 Brooklyn, NY
 Wolf Lodge Cultural Foundation, Orcas,
 WA
 Women Inc., East Orange, NJ
 Wood Hollow Childrens Center Inc.,
 Madison, WI
 Worcester Fights Back, Inc., Worcester,
 MA
 Work Force Development Agency - A,
 Everett, WA
 WJPZ Radio, Inc., Syracuse, NY
 Yale 50-50 Fund, Inc., Woodbridge, CT
 Yellow Ribbon Celebrity Golf Classic at
 Forsgate Inc., Montclair, NJ
 Yeshiva Zichron Dovid, Inc., Brooklyn,
 NY
 Youth World Institute, Rockford, IL
 ZAS-Wings of Hope Inc., Washington,
 DC

If an organization listed above sub-
 mits information that warrants the re-
 newal of its classification as a public
 charity or as a private operating founda-
 tion, the Internal Revenue Service will
 issue a ruling or determination letter
 with the revised classification as to
 foundation status. Grantors and contribu-
 tors may thereafter rely upon such rul-
 ing or determination letter as provided

in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

New Form 8837, Notice of Adoption of Revenue Procedure Model Amendments

Announcement 96–113

New **Form 8837**, Notice of Adoption of Revenue Procedure Model Amend-

ments, has been developed for use by sponsors of “master or prototype” plans, regional prototype plans, mass-submitter plans, and volume submitter plans, to transmit documents relating to the adoption of model plan amendments.

The form is now available by modem or on the Internet. The IRS distribution centers will have the form by early November 1996. Plan sponsors may order Form 8837 by telephone or they may use IRS electronic information services to get copies.

| Request by— | Number or Address |
|--|---|
| Telephone | 800–TAX–FORM (800–829–3676) |
| Computer and modem | 703–321–8020 (modem settings are N, 8, 1) |
| Internet: World Wide Web FTP Telnet | http:// www.irs.ustreas.gov ftp.irs.ustreas.gov iris.irs.ustreas.gov |

Announcement of the Disbarment, Suspension, or Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue

Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public

accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

| Name | Address | Designation | Date of Suspension |
|-----------------------|----------------------|-------------|--|
| Lamb, Gordon W. | Pullman, WA | CPA | September 1, 1996 to January 31, 1997 |
| Anderson, Randall S. | Arlington Hgts, IL | CPA | September 1, 1996 to February 28, 1998 |
| Broderick, William J. | Farmington Hills, MI | CPA | September 1, 1996 to November 30, 1996 |
| Ruggiero, John M. | Rutland, VT | Attorney | September 1, 1996 to October 31, 1996 |
| Eklund, Mark | Portland, OR | CPA | September 1, 1996 to February 28, 1997 |
| Stayner, G. Craig | Salt Lake City, UT | CPA | September 15, 1996 to June 14, 1997 |
| Allen, Lehman D. | Lubbock, TX | CPA | September 20, 1996 to September 19, 1998 |
| Hardgrove, David L. | Amarillo, TX | CPA | September 21, 1996 to June 20, 1997 |
| Trader, John H. | Kansas City, MO | Attorney | September 30, 1996 to March 29, 1997 |
| Schmertz, Carl D. | Wilmette, IL | CPA | October 1, 1996 to March 31, 1999 |
| Bengston, Wessel | Chicago, IL | CPA | October 15, 1996 to April 14, 1997 |

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before The Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actu-

aries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public

accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

| Name | Address | Designation | Date of Suspension |
|-----------------------|--------------------|----------------|-----------------------------------|
| Alleva, Donald | Mount Vernon, NY | Enrolled Agent | Indefinite from September 5, 1996 |
| Rose, Robert M. | Dallas, TX | Attorney | Indefinite from September 5, 1996 |
| McGrath, Gregory | New Smyrna Bch, FL | CPA | Indefinite from September 8, 1996 |
| Finch, Kenneth L. Jr. | Pelham, AL | CPA | Indefinite from September 8, 1996 |

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¹A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.

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¹A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.